

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A23-0279**

Adam Dowd,  
Appellant,

vs.

Lynn Slordal, et al.,  
Respondents.

**Filed September 5, 2023  
Reversed and remanded  
Bjorkman, Judge**

St. Louis County District Court  
File No. 69DU-CV-21-2101

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Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Bjorkman,  
Judge.

**NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellant Adam Dowd challenges summary judgment dismissing his statutory  
nondisclosure, misrepresentation, and contract claims arising from his purchase of a

methamphetamine-contaminated home from respondent. Because genuine issues of material fact preclude judgment as a matter of law, we reverse and remand.

### **FACTS<sup>1</sup>**

Respondent Lynn Slordal and his wife buy, remodel, and resell homes for profit.<sup>2</sup> In June 2019, Slordal purchased the home at issue for \$181,000. The MLS listing includes statements that the property “may be in an unsafe condition,” had “been abused,” and that “virtually everything” needed to be improved. Slordal spent about a year remodeling the home before placing it back on the market.

During that time, both next-door neighbors spoke with Slordal about the home’s condition. Neighbor S.B. informed Slordal that Minnesota Power—the owner of the land on which the home is situated—contemplated demolishing the home if it did not sell because of its unsafe condition. He asked Slordal whether he intended to “remediate it, as it is well known as a house where drug use had occurred.” Slordal responded that he “didn’t smell any drugs in the house” and did not “believe any remediation was necessary.” S.B. spoke with police regarding the prior homeowners on multiple occasions, though he did not personally witness drug use at the home. S.B. was also aware that another neighbor

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<sup>1</sup> Because this is a summary-judgment appeal, we present the facts in the light most favorable to the nonmoving party. *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021).

<sup>2</sup> Lynn and Carrie Slordal are both respondents. But because the material facts focus on Lynn Slordal’s awareness of the home’s association with methamphetamine and his disclosures to Dowd, we reference him personally throughout the opinion.

once found methamphetamine hidden in their garage after they encountered one of the home's prior residents hiding there.

Neighbor J.S. was present when S.B. asked Slordal about his plans for the home, including any remediation. J.S. recalled that S.B. asked Slordal if he had seen any signs of “meth use,” and that Slordal replied he did not know what methamphetamine smelled like. J.S. also remembered law enforcement once telling him that “meth was being sold out of” the home.

M.E., who is S.B.'s father-in-law, spoke with Slordal “about two times a week” during the summer of 2020. Slordal told M.E. he was “generally aware of the past conduct” and “multiple police calls, disturbances and other criminal activity” associated with the home. On at least one occasion, Slordal referred to the home as a “meth house.” And he once made a comment along the lines of, “Nobody has thanked me for taking the Meth House of the neighborhood.”

In July 2020, Slordal agreed to sell the home to Dowd for \$303,000. The two executed a property disclosure statement and a purchase agreement. The disclosure statement references Minn. Stat. §§ 513.52-.60 (2022), which require sellers of residential real estate to disclose “all material facts of which the seller is aware that could adversely and significantly affect[] an ordinary buyer's use and enjoyment of the property.” *See* Minn. Stat. § 513.55, subd. 1(a)(1).

Pursuant to Minn. Stat. § 513.55 (the general disclosure statute), Slordal disclosed only that he had remodeled the home and that there were “small cracks here [and] there” in the concrete. He affirmatively stated that there were no “other material facts that could

adversely and significantly affect an ordinary buyer's use or enjoyment of the Property or any intended use of the Property.” Slordal did not disclose what he had been told about the home's association with methamphetamine use.<sup>3</sup>

The parties completed the sale of the home in September.<sup>4</sup> Shortly thereafter, Dowd began to suspect that methamphetamine had been used in the home following conversations with neighbors and after finding hypodermic needles in the yard. He hired a professional service to test the home for methamphetamine. The testing revealed high levels of contamination in several areas of the home and garage.<sup>5</sup>

In September 2021, Dowd sued Slordal for failure to make the disclosures required by the general disclosure statute, misrepresentation, breach of the purchase agreement, and contract rescission. Sometime the following winter, Slordal called Dowd and said “he wanted to fix the problem” by offering Dowd “a couple buckets of paint to paint over” the methamphetamine contamination. During that phone call, Slordal told Dowd he “remembered the conversation with the neighbors.”

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<sup>3</sup> The disclosure statement also includes a section about methamphetamine production as required by Minn. Stat. § 152.0275, subd. 2(m) (2022). In that section, Slordal checked the box that indicated he was not aware of any methamphetamine production on the property. Dowd does not claim that Slordal violated this statute.

<sup>4</sup> Prior to closing, Dowd retained a professional to conduct a standard home inspection. It is undisputed that a standard home inspection does not include testing for methamphetamine contamination.

<sup>5</sup> The inspection revealed contamination levels up to three times greater than the level at which the Minnesota Department of Health calls for remediation.

Slordal moved for summary judgment, arguing that all of Dowd's claims fail as a matter of law because he cannot demonstrate that Slordal violated the methamphetamine-production disclosure statute. Dowd opposed the motion, submitting the 2019 MLS listing for the home, deposition testimony of neighbors S.B. and J.S., M.E.'s declaration, the methamphetamine testing results, a remediation proposal that exceeds \$150,000, and an appraisal indicating the "impaired market value" of the home is approximately \$135,000. Dowd argued that the evidence reveals genuine fact issues as to whether Slordal knew but failed to disclose that the home was associated with methamphetamine use, and that this fact could adversely and significantly affect Dowd's use and enjoyment of the home under the general disclosure statute.

The district court granted Slordal's motion, determining that all of Dowd's claims fail because he produced no evidence that Slordal had personal knowledge that the home was contaminated by methamphetamine and could not show that he relied on Slordal's purported misrepresentations.

Dowd appeals.

### **DECISION**

Summary judgment is appropriate if "the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. To defeat summary judgment, the nonmoving party must submit competent evidence of a material fact dispute. *McBee v. Team Indus., Inc.*, 925 N.W.2d 222, 230 (Minn. 2019) ("When a motion for summary judgment is made and supported, the nonmoving party must present facts showing that there is a genuine issue as to a

material fact.”). We review a district court’s summary-judgment decision de novo, resolving all doubts and factual inferences in favor of the nonmoving party. *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019).

Dowd contends that genuine issues of material fact preclude summary judgment as to his statutory-disclosure, misrepresentation, and breach-of-contract claims. All three claims flow from Slordal’s failure to disclose his awareness that the home was associated with methamphetamine use and that this association adversely and significantly affected Dowd’s use and enjoyment of the home. Slordal argues that all three claims fail as a matter of law because there is no evidence that he knew the home was *contaminated* by methamphetamine. Dowd has the better argument.

We begin by reviewing what Dowd’s claims are and what they are not. The record reflects confusion among the parties and the district court as to whether the claimed nondisclosure relates to methamphetamine use, production, or contamination at the home. The complaint references all three and alleges more broadly that Slordal “failed to disclose [his] knowledge of the Home’s unsafe condition.” It specifically cites the general disclosure statute but neither cites to nor alleges a violation of the methamphetamine-production disclosure statute. A pleading need only “give fair notice to the adverse party of the incident giving rise to the suit with sufficient clarity to disclose the pleader’s theory upon which his claim for relief is based.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 602 (Minn. 2014) (emphasis omitted). We are satisfied that the complaint meets this low standard because it put Slordal on notice that the nondisclosure claim is based on his failure to disclose methamphetamine use and contamination at the home. Dowd further refined

this notice when opposing summary judgment; Dowd’s submissions focus solely on Slordal’s failure to disclose that the home was associated with methamphetamine use—i.e., its “reputation as a meth house.” With this clarification of Dowd’s theory of liability, we turn to the elements of his three claims and whether the record precludes summary judgment dismissing them.

As noted above, the general disclosure statute requires a seller of residential real estate to disclose “all material facts” of which they are aware “that could adversely and significantly affect” a buyer’s “use and enjoyment of the property.” Minn. Stat. § 513.55, subd. 1(a)(1). A seller must make the disclosure “in good faith and based upon the best of the seller’s knowledge at the time of the disclosure.” *Id.*, subd. 1(b). A seller who fails to make such a disclosure “and was aware of material facts pertaining to the real property is liable to the prospective buyer” for damages and equitable relief. Minn. Stat. § 513.57, subd. 2.

To prevail on a misrepresentation claim, a person must establish: (1) the defendant made a false representation of a material fact, (2) the defendant knew the representation was false or made it without knowing whether it was true or false, (3) the defendant intended to induce the person to act in reliance on that representation, (4) the person relied on the representation, and (5) the person sustained damages as a result of this reliance. *Valspar Refinish, Inc. v. Gaylord’s, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009).

And to prove breach of contract, a party must show the existence of a contract, performance of any conditions precedent to their right to demand performance by another party, and breach of the contract by the other party. *Park Nicollet Clinic v. Hamann*, 808

N.W.2d 828, 833 (Minn. 2011). In real estate transactions, “[t]he merger doctrine generally precludes parties from asserting their rights under a purchase agreement after the deed has been executed and delivered.” *Bruggeman v. Jerry’s Enterprises, Inc.*, 591 N.W.2d 705, 708 (Minn. 1999). But the merger doctrine does not apply in cases of misrepresentation. *Id.*

In opposing summary judgment, Dowd submitted the evidence outlined above. To recap, two neighbors testified that they advised Slordal of methamphetamine use in the home; Slordal told Dowd that he remembers the conversation. And Slordal signaled his awareness of the information the neighbors provided—and the potentially adverse and significant effect of the home’s association with methamphetamine use—by referring to it as a “meth house” and remarking to M.E. that no one had “thanked him” for buying the neighborhood “Meth House.” By not disclosing this information, Dowd asserts that Slordal (1) violated the general disclosure statute, (2) misrepresented that the disclosure statement included all material facts that could adversely and significantly affect Dowd’s use and enjoyment of the home, and (3) breached the purchase agreement.

To persuade us otherwise, Slordal dismisses this evidence as “rumors, hearsay, and speculation” and contends it does not establish that he had the “personal knowledge” required to establish liability under the general disclosure statute. *See* Minn. Stat. § 513.57, subd. 1. He asserts that Dowd’s misrepresentation claim fails because Dowd had the home inspected prior to closing, precluding Dowd from relying on any purported misrepresentation. And he argues that Dowd’s contract claim fails because he made no misrepresentations about the home. None of these arguments are convincing.



First, while Slordal may dispute his neighbors' accounts of their discussions with him, their sworn testimony regarding what they told him and how he responded is neither hearsay nor speculative—it is competent evidence for a jury to weigh. *See* Minn. R. Evid. 801(d)(2) (explaining that an admission by a party opponent is not hearsay when it is offered against that party).

Second, Slordal cites no caselaw interpreting “personal knowledge” under Minn. Stat. § 513.57, subd. 1, to mean only information that a person directly perceives through one of their senses. We have found no such authority. Nor are we persuaded that subdivision 1’s exception from liability for sellers whose disclosures contain an “error, inaccuracy, or omission” that was not within their “personal knowledge” disturbs the broad liability described in subdivision 2. Dowd does not allege that Slordal made an error or failed to disclose information that could only be obtained through an inspection or discovered by an expert, which subdivision 1 generally addresses. Rather, Dowd alleges that Slordal was aware of and did not disclose information he received, acknowledged, and repeated to others about the home’s association with methamphetamine use. Moreover, applying the restrictive interpretation of “personal knowledge” Slordal endorses would be inconsistent with the legislative intent in passing this remedial statute. *See* Minn. Stat. § 513.57, subd. 2 (“A person injured by a violation of this section may bring a civil action and recover damages and receive other equitable relief as determined by the court.”); *see also S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 232 (Minn. 2010) (“Remedial statutes are generally entitled to liberal construction in favor of the remedy the statutes provide or the class they benefit.”).

Third, we are not persuaded that the fact Dowd had the home inspected prior to closing defeats his contention that he relied on Slordal's representation that he disclosed all facts material to Dowd's use and enjoyment of the home. Slordal cites *Valspar*, a case involving a commercial transaction between sophisticated business entities. 764 N.W.2d at 369. Before completing the sale, the purchaser conducted an investigation that included testing the quality of the paint it planned to buy and experimenting with how it would work when applied to truck-bed lids—its intended use. *Id.* at 363. The purchaser claimed that when it reported color match and application issues, the seller indicated that it would resolve any problems. *Id.* When issues arose after the sale, the purchaser sued alleging misrepresentation and other claims. *Id.* at 364. The seller moved for summary judgment on the misrepresentation claim. Our supreme court noted that the reliance element of a misrepresentation claim is evaluated “in the context of the aggrieved party's intelligence, experience, and opportunity to investigate the facts at issue.” *Id.* at 369. And the supreme court concluded that the commercial nature of the transactions and the purchaser's thorough investigation and testing precludes it from establishing that it reasonably relied on the seller's alleged misrepresentation. *Id.*

The record here compels a different result. It is undisputed that a standard home inspection does not include testing for methamphetamine. Accordingly, the results of the inspection Dowd obtained do not render his reliance on Slordal's misrepresentation unreasonable. *See, e.g., Davis v. Re-Trac Mfg. Corp.*, 149 N.W.2d 37, 39 (Minn. 1967) (reliance on a misrepresentation may be justified when the relying party makes only a partial or cursory investigation before making the purchase). Dowd submitted evidence

that, had Slordal informed him of the home's association with methamphetamine, he would have had the home tested for contamination—as he did after receiving this information from the neighbors. And he submitted evidence that his use and enjoyment of the home—namely, the remediation costs and the home's diminished value—were adversely and significantly affected.<sup>6</sup>

In sum, we conclude that genuine issues of material fact preclude summary judgment on Dowd's claims. Evidence that Slordal was told the home was associated with methamphetamine use—to the extent he himself referred to it as a “meth house”—present issues for the jury as to whether Slordal violated the general disclosure statute, misrepresented the completeness of his disclosure statement, and breached the purchase agreement. As to the materiality of the information Slordal did not disclose, caselaw is clear that “[m]ateriality is ordinarily a question of fact” and is only a legal question when “reasonable minds can reach only one conclusion.” *STAR Ctrs, Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). We easily conclude that a home's association with methamphetamine is a material fact that “could adversely and significantly affect[] an ordinary buyer's use and enjoyment of the property.” Minn. Stat. § 513.55, subd. 1(a)(1). Armed with such knowledge, a prospective buyer could choose to test the home for

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<sup>6</sup> The district court concluded that Dowd's breach-of-contract claim is barred by the merger doctrine because the exception for fraud or misrepresentation does not apply. Because we reverse and remand Dowd's misrepresentation claim for trial, and the same disputed material facts relate to both the contract and misrepresentation claims, we also reverse and remand the contract claim for trial.

potential methamphetamine contamination or walk away from the transaction. Dowd is entitled to have a jury decide whether Slordal is liable for depriving him of this choice.

**Reversed and remanded.**